THE DREDGE CORPORATION

IBLA 72-16 Decided August 13, 1971

Res Judicata--Rules of Practice: Appeals: Generally

> Where an appeal has been taken and a final Departmental decision has been rendered thereon, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same party, the same land, the same claim, and the same issues.

3 IBLA 98

IBLA 72-16	:	Nev. 046124
THE DREDGE CORPORATION	:	Mineral entry patented
	:	in part, rejected in
	:	part
	:	Appeal dismissed

DECISION

By his decision of June 10, 1971, the assistant manager of the Nevada State Office of the Bureau of Land Management announced that mineral entry was approved and patent issued for a ten-acre portion of the Dredge 54 mining claim, and that the balance of the claim, consisting of 30 acres, was rejected for the reason that the land is unavailable because it was previously patented to others.

In bringing its appeal from that decision, the Dredge Corporation asserts that the Bureau of Land Management had no right to classify and dispose of the 30 acres in question pursuant to the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. 682(a) (1964), because of the prior right of appellant to those lands by virtue of its mining claim and its application for patent thereto then pending in the land office. Appellant asks that the conflicting patents be revoked or, alternatively, that it be granted 30 acres of equivalent land.

Appellant's brief neglects to mention that it has previously brought this identical appeal, involving the same lands, the same mining claim, and the same issues, on the occasion when the initial decision in the case was rendered by the Reno land office in 1962. That decision was affirmed by the Division of Appeals, Bureau of Land Management, and ultimately by the Department in The Dredge Corp., A-29997 (June 15, 1964), in which it was held that the Department has no authority to cancel the conflicting patents. In that decision, the Department declined to recommend that a suit be instituted for the purpose of procuring the revocation of those patents, and it held further that the Department is without authority to issue a patent for the reserved minerals in the patented lands.

That decision constituted the final departmental action on the matter. The decision noted that appellant was not precluded from asserting its rights under the mining laws against the holders of a legal title in a court of competent jurisdiction. See Montgomery v. Gerlinger, 304 P.2d 93 (Cal. Dist. Ct. App. 1956). Nothing in the record before us suggests that appellant availed itself of recourse to the courts from the Department's decision of June 15, 1964, with reference to the claim here at issue. 1/

Final action having been taken on behalf of the Secretary by the decision of the Assistant Solicitor for Land Appeals in 1964, the matter is res judicata. The doctrine of res judicata has long been accepted and applied by the Department. Cf. Southern Pacific Co., Lewis G. Wedekind, 77 I.D. 177 (1970). The decision from which this appeal is taken merely implements the final Departmental decision already rendered. The principle of res judicata is operative to bar a reconsideration of that determination in a later proceeding. John G. and Zilpha L. Wenzel et al., A-30616 (Dec. 1, 1966). Consequently, there is no basis for granting appellant's requests.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the appeal is dismissed.

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Edward W. Stuebing, Member

We concur:

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Joan B. Thompson, Member

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Frederick Fishman, Member

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1/ The status of certain other claims located in the same area was unsuccessfully litigated by appellant. Dredge Corp. v. Husite Co., 369 P.2d 676 (Nev. 1962); Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966); see Dredge Corp., 64 I.D. 368 (1957); Dredge Corp., 65 I.D. 336 (1958).